

Serial Number: 10/662,582
Filing Date: 9/15/2003
Reply to Office Action Dated: 4/14/2005
Practitioner's Docket: 87819/00004

Remarks

The claims are partially renumbered herein to correct an inadvertent numbering error (duplication of claims 10 and 11) in the original claim set. Claims 23 through 28 are newly added, and are well supported by paragraphs 15-24 of the specification and Figures 1 to 12 of the drawings as originally filed. Amended claims 16 through 22 (originally claims 14-20) now depend, directly or indirectly, from new claim 23 rather than from claim 1. Claim 16 (original claim 14) is also amended to better conform the recitations to the wording of claim 23.

Newly presented claims 23-24 and 27-28 are believed to be generic to all embodiments of the invention depicted in the drawings. FIGS. 1-12 (Groups 1, 2 and 3) all disclose embodiments having a magnet in the side wall. FIG. 5 (Group 2) discloses an embodiment having a pocket disposed between inside and outside portions in the side wall. FIG. 6 (Group 1) and FIGS. 7-12 (Group 3) disclose embodiments having a magnet in the bottom. Claims 1-8, 10-15 and 23-28 read on the embodiment of at least one figure of Group 1. Claims 1, 4-9, 12-15, 23-24 and 26-28 read on the embodiment of the figure of Group 2. Claims 16-25 and 27-28 read on the embodiment of the figures of Group 3.

Although Applicant provisionally elects for examination the species of Group 1, the restriction requirement is respectfully traversed because newly presented claims 23-24 and 27-28 are believed to be generic as to all species disclosed in all three Groups. Furthermore, claims 16-22 and 24-28 depending from claim 23 variously read on each of the embodiments disclosed in each of the three Groups.

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It is improper to restrict the scope of the claims to one or more of the embodiments disclosed in the specification where a generic claim is present and allowable. The fact that the invention can take the form of various embodiments that are not structurally identical and that additional features may optionally be present is not a sufficient basis for finding the embodiments to be independent or patentably distinct.

Applicant respectfully asserts that the examiner has failed to establish a *prima facie* case that the identified groups are independent or distinct from each other. The particular reasons relied upon by the examiner for holding that the invention as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. M.P.E.P. §816; M.P.E.P. §803 (Guidelines). The examiner has provided no reasoning beyond a conclusory assertion that the three identified groups reflect patentably distinct species; nor is there any indication regarding the specific features of each species that allegedly render them independent or distinct. Without such evidence, there is insufficient justification to restrict the claims, and the restriction requirement should be withdrawn.

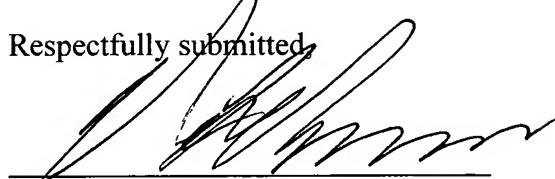
Further, even if an application contains independent or distinct invention, the examiner should examine the application on its merits if the search and examination of the entire application can be made without serious burden. M.P.E.P. §803. A *prima facie* showing of serious burden can be shown by an appropriate explanation of separate classification, separate status in the art, or a different field of search as detailed in Section 808.02. M.P.E.P. §803 (Guidelines). The allegedly distinct species in the current application are not believed to fall within separate classes or subclasses, are not believed

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to have obtained separate status in the art, and have not been shown to require different fields of search. It is believed that a search directed to each of the allegedly distinct would identify the same relevant art as the primary references, and it would be a significant burden on both the applicant and the Patent Office to conduct separate searches and examinations for each disclosed embodiment of the current invention. Therefore, the restriction requirement is improper and should be withdrawn.

Applicant nevertheless reserves the right to pursue non-elected subject matter in one or more divisional applications if the examiner persists or prevails in the restriction requirement.

The Commissioner is hereby authorized to charge any additional fee that may be due in connection with the filing of this paper to the Locke Liddell & Sapp LLP Deposit Account No. 12-1781.

Respectfully submitted,

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Date: 7-14-05

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